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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,799	07/23/2003	Richard Douglas Schultz	050337-1610 (06CXT0023WL)	9023
7590 04/02/2008 Scott A. Horstemeyer, Esq. THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P. 100 Galleria Parkway, Suite 1750 Atlanta, GA 30339			EXAMINER BATES, KEVIN T	
			ART UNIT 2153	PAPER NUMBER
			MAIL DATE 04/02/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/625,799	Applicant(s) SCHULTZ ET AL.	
	Examiner KEVIN BATES	Art Unit 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 15-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 15-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

This Office Action is in response to a communication made on October 15, 2007.

Claims 1 and 4 have been amended.

Claims 15-26 have been newly added.

Claims 1-8 and 15-26 are pending in this application.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 17 and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 17 is directed towards an apparatus comprising digital logic. An apparatus does not necessary limit the claim to only hardware embodiments, so the claim has at least one embodiment of only software, making the claim software per se.

Claim 21 is directed towards a system with means plus function steps. A system can include both hardware and software embodiments and claim 17 shows that the means for performing the listed steps can be digital logic or software steps, thus making the claim software per se.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-8, 15-16, 18-22, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erjanne (6490271) in view of Uemura (6430161).

Regarding claims 1, 15, and 21, Erjanne teaches a method for reducing loading in a software receiver for a packet based communications system comprising the steps of:

measuring the current buffer load (Column 6, lines 7 – 19);

determining that the buffer load has exceeded a predetermined threshold (Column 6, lines 7 – 19);

responsive to determining that the buffer has exceeded a predetermined threshold, entering a power save mode, thereby signaling the communications system transmitter transmission to inhibit packet predetermined (Column 5, lines 54 – 56, where if the DTE isn't receiving any traffic from the sending DTE, then it is "saving power");

monitoring the buffer load while the transmitter is inhibited (Column 6, lines 15 – 19).

determining that the buffer load has fallen below a threshold (Column 6, lines 15 – 19); and

signaling the communications system transmitter to begin transmitting packets once the buffer load has fallen below the predetermined threshold (Column 6, lines 15 – 19).

Erjanne teaches that the buffer fills up due to failure or slowness of the DTE to react, but does not explicitly indicate monitoring CPU load instead of the receive buffers.

Uemura teaches a system for determining when packets to a mobile device should be inhibited (Column 7, line 66 – Column 8, line 17) which includes monitoring the CPU load of the mobile device (Column 8, lines 38 – 55).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Uemura's teaching of monitoring CPU load in Erjanne's system to improve Erjanne's monitoring of the CPU's ability of reaction, rather than the results of that ability.

Regarding claims 2, 16, and 22, Erjanne teaches a method as in claims 1, 15, and 21.

Erjanne does not explicitly indicate wherein the measurement of CPU loading is made by an operating system background task.

Uemura teaches wherein the measurement of CPU loading is made by an operating system background task (Column 4, lines 22 – 27).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Uemura's teaching of monitoring CPU load in Erjanne's

system to improve Erjanne's monitoring of the CPU's ability of reaction, rather than the results of that ability.

Regarding claims 4, 18, and 24, Erjanne teaches a method as in claims 1, 15, and 21 wherein the transmitter signaling is performed during the power save mode (Column 5, lines 54 – 56, where if the DTE isn't receiving any traffic from the sending DTE, then it is "saving power").

Regarding claims 5, 19, and 25, Erjanne teaches a method as in claims 1, 15, and 21, in which the communications system is wireless (Column 3, lines 8 - 24).

Regarding claims 6, 7, 8, 20, and 26, Erjanne teaches the method of claims 1, 15, and 20 and discloses that the communications system is wireless.

Erjanne does not explicitly indicate that the communications system can be IEEE 802.11 wireless local area network (WLAN), Bluetooth, or IEEE 802.15 wireless personal area network (PAN).

Examiner takes Official Notice (see MPEP § 2144.03) that "adding support for IEEE 802.11 wireless local area network (WLAN), Bluetooth, or IEEE 802.15 wireless personal area network (PAN) would be obvious because Erjanne's system is meant to be used within any wireless communication system".

Claims 3, 17, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erjanne in view of Uemura and in further view of Sherman (6434513).

Regarding claims 3, 17, and 23, Erjanne teaches a method as in claims 1, 15, and 22.

Erjanne does not explicitly indicate wherein the CPU load measurement is based on the response time of the host CPU to a request for interrupt.

Sherman teaches that CPU load can be measured in relation to measuring the response time of a request to the CPU (Column 1, lines 20 – 27).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Sherman's teaching in the combination of Erjanne and Uemura to determine the CPU load based on request response time in order to determine the load in terms of actual real world application response time.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN BATES whose telephone number is (571)272-3980. The examiner can normally be reached on 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenton B. Burgess/
Supervisory Patent Examiner, Art Unit 2153

/Kevin Bates/
Examiner, Art Unit 2153